Pages 1 - 100

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Charles R. Breyer, Judge

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**NO. CR 18-00577-CRB**
	)	
MICHAEL RICHARD LYNCH and	)	
STEPHEN KEITH CHAMBERLAIN,	)	
	)	
Defendants.	)	
	)	

San Francisco, California
Wednesday, February 21, 2024

TRANSCRIPT OF PROCEEDINGS

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Wednesday - February 21, 2024 **2:02 p.m.**

P R O C E E D I N G S

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THE CLERK: All rise. Court is now in session. The Honorable Charles R. Breyer presiding.

You may be seated.

Calling Criminal Action CR-18-0577, USA vs. Michael Richard Lynch, and USA vs. Stephen Keith Chamberlain.

Counsel, please step forward and state your appearances for the record.

MR. LEACH: Good afternoon, Your Honor. Robert Leach on behalf of the United States. I'm joined by Adam Reeves, Kristina Green, Zach Abrahamson; and at counsel table we have Ali Hasan, who's our paralegal on the case.

THE COURT: Good. Good.

MR. MORVILLO: Good afternoon, Your Honor. Chris Morvillo for Dr. Lynch, who's present in the courtroom. With me is also Reid Weingarten, Celeste Koeleveld, and Brian Heberlig.

THE COURT: Good morning.

MR. LINCENBERG: Hi, Your Honor. Gary Lincenberg with Mr. Chamberlain, who's present in court; and from my firm Raymond Seilie and Mike Landman are here.

THE COURT: All right. Good morning.

Okay. Everybody have a seat.

This is the -- first, excuse my voice. I have a cold. It's a cold. You know, just apparently a very common -- all too common cold; but people say, "Well, that's great. It's a common cold. It's not anything else." So I -- I'll sound a bit peculiar, but that's the way it is.

This is the pretrial conference, and so there are a couple of things that I want to try to accomplish in the conference. One, of course, I'm going to go through the motions in limine. I'm not going to have -- I have some specific questions about some of them, but I'm not going to have argument on all of them. I'm going to tell you what my rulings are and without the benefit of my wisdom behind the rulings because it occurred to me that one of two things will happen.

One is there could be a conviction; and if there's a conviction, obviously I'm going to have to write on the subject of the various motions in limine to the extent that they could have impacted a verdict.

On the other side, there could be acquittal, and you will never see a piece of paper as to why I thought about A, B, C, or D because I don't think that there's any -- I'm not writing for history.

This is a case that will have an outcome one way or the other; and depending on the outcome, something will be written if it's required. And if not, if there isn't a conviction then, I'm simply going to go quietly into the night and all

these papers that you filed will still be there as a record, but there will be no conviction. So no appeal -- no conviction, no appeal. That's the end of the matter. And I have no opinion at all on the outcome.

So let's go through the various motions in limine starting with the Government first.

The Government's motion -- and even though they're styled motions in limine, they're also motions to admit some of them. So it's -- "in limine" suggests that that means excluded, but it can be -- it's been interpreted by the parties on both sides to be inclusive as well as exclusive, and so let's not be troubled by the nomenclature.

The Government's first motion, which is to admit restatement and summary charts, this is not the first time I've addressed it. Obviously, I did in the *Hussain* trial, in that decision, which was that the restatement was admitted but the summary charts were not. I don't have a recollection as to whether or not the summary charts were, one, proffered for admission; or, two, used for demonstrative only; or, three, weren't even there, but I think they were there, my recollection is. Maybe Mr. Reeves recalls.

MR. REEVES: My recollection is in the *United States vs. Hussain* that the summary charts were used as demonstratives only to aid the witness testimony but were not received in evidence.

THE COURT: Okay. So that would be my -- that would be my intention in this case. If they are offered, and it's up to the party, it's up to the Government whether they want to offer them, they could only be used for demonstrative purposes. They will not be admitted as exhibits into evidence.

Now, the Government states that the summary charts are based on business records that Yelland and Anderson used to do their work.

My question to the Government: Has the Government identified the underlying records that it relied on?

Mr. Leach?

MR. LEACH: The answer is yes, Your Honor. In Exhibit 2749 beginning at page --

THE COURT: Wait a minute. I have to write this out. 2749.

MR. LEACH: -- beginning at page 14, Mr. Yelland itemizes the records he relied on for prep- -- the business records he relied on for preparation of the summary chart. Now, there's some dispute with the other side about are these really business records or are they something else, but the items that Mr. Yelland was relying on to prepare the summary are itemized in Exhibit 2749.

THE COURT: So he said what he's relied on, but the dispute is: Are they business records?

So that's -- that's a question.

And, I mean, I recall -- wasn't there some, like, a newspaper article or an interview that somebody gave or something to that nature, and then Yelland says, "Well, I read it, and that forms the basis for -- a basis" -- forget "the" -- "a basis for coming to this particular conclusion."

Is that -- is my recollection correct in that regard?

MR. LEACH: Your recollection is correct, Your Honor.

And just to give context for why there's citations to news articles, my understanding is there are some instances where Mr. Yelland learned that Autonomy was no longer in the running to do a software sale because it learned through publicly available information that a competitor had actually consummated that transaction.

And just as a salesperson might report to finance "We're not going to close this deal anymore," and the finance executive will make a revenue determination based on that, that was, in certain circumstances, what Mr. Yelland concluded was the reason why there would not be a subsequent transaction because they -- it essentially lost the deal.

But the overwhelming majority of the records are e-mails and contracts and invoices and other types of business records that finance professionals use all the time for accounting determinations.

THE COURT: Well, let's -- let's see if we can short circuit this.

If, in fact, you're satisfied -- and I'll put that in quotes -- but if, in fact, you're satisfied with not introducing the summary charts -- see, I think a summary chart could go into evidence if, in fact, the records supporting it are business records -- are exclusively admissible documents, if they are. Then that wouldn't -- then my -- I would reverse my earlier decision.

On the other hand, I have a sense that they're not all that. Some are. Some aren't. And it's an enormously time-consuming and -- I've got to try to figure out is it really -- well, I don't have to figure out anything.

You have to figure out is it so important to the presentation of your case that you want to go through each thing in the summary judgment -- and maybe you've done this already and I just haven't seen it -- each conclusion he has in the summary judgment and say it's Exhibit 2749, it's Exhibit 2750, it's Exhibit -- I have to say, there's no shortage of exhibits in this case.

As a matter of fact, I was thinking when I got the first list yesterday morning, that there were -- was it 9,000? 13,000? -- that it was 13,000. I thought: Well, that's easy. I'll just admit the 13,000 because I'm sure there won't be an objection.

I thought that to myself, trying to be funny to myself. But then, of course, you amended it and decided that you needed

a few more, so it's now up to 20,000; right? Okay.

MR. LEACH: It's grown.

THE COURT: It's growing. It's growing.

I don't know who's going to look at the 20,000. I don't think I am. That would mean that the case would go on for about two months and the jury deliberations would go on for two years. So that's just not going to happen, but we'll try to figure it out.

Anyway, I don't know that you're in a position today to say what you want to do about the summary -- the summary -- the summaries. I am going to permit Yelland to testify about -- I guess there were two people that were going to testify about it. As I did in the first trial, I was going to permit them to testify.

MR. LEACH: I appreciate the Court's comments, and we can look -- you know, the summary was prepared by Yelland, who is not a lawyer and who's not thinking about the business records exception necessarily. And I can look -- to the extent we want to admit the chart itself, we can look closely to what is itemized and whether they are or are not business records.

THE COURT: So Yelland was not identified as an expert in the case, but obviously he has, by virtue of his position, experience and training; as a percipient witness, he has -- he has certain knowledge.

Is that how he is testifying? Because you haven't limited

him -- you haven't identified him as an expert?

MR. LEACH: That is correct, Your Honor; we haven't identified him as an expert.

We don't think we're required to under Rule 16. He does have certain knowledge that he applied in the course of his job duties, but it's all based on his contemporaneous work and not specialized knowledge outside of his role at Autonomy.

THE COURT: Okay.

All right. So let me turn to the Defense, moving up here chair by chair.

MR. HEBERLIG: Thank you, Your Honor.

Hard to stay in my seat. Brian Heberlig behalf of Dr. Lynch.

THE COURT: You'll get your seat back. Go ahead. Yeah, go ahead. And just -- we're just addressing them one -- these things.

MR. HEBERLIG: Absolutely.

So there are two points I'd like to hit. One is the document issue that you just raised.

So we actually do have a disagreement with the Government. The charts themselves are not based on the documents that Mr. Yelland identified.

What is in that index of documents, you may recall there was like a trolley rolled out with a bunch of documents on it. They're historical records, like the original contracts and

some payment records and the like, but what Mr. Yelland testified to was why he restated certain transactions; and that testimony was based on interviews he conducted, information he got from Morgan Lewis or PWC. None of that underlying material is in the chart, so it's very much only half the picture and, if anything, it supports the original accounting determinations not the restatement.

The stuff he relied upon, as partially apparent from his testimony but came to light more from documentation that was discovered after the *Hussain* trial, was pure hearsay: Interviews of employees, work product, and other reports he got from counsel who were conducting the legal investigation.

So that goes to both the charts are not supported by underlying business records, and we haven't received the bases for Mr. Yelland's --

THE COURT: Well, that's not coming in.

MR. HEBERLIG: Understood.

But the related point is: We haven't received the bases for Mr. Yelland's opinions.

And what he is offering is quintessential expert testimony. He's an accountant. The Government admits in its brief that he's applying his specialized knowledge to the work he did. It's not just observations.

I mean, we've cited Ninth Circuit authority for this concept. It's not lay opinion. It would be as if a civilian

oversaw an autopsy, saw someone remove a bullet, and opined on what the cause of death was.

No. He is using his accounting expertise to say: This is why that transaction's restated or this transaction's restated. And the problem with that is we've not received proper disclosure of the bases for his opinions.

THE COURT: But don't police do that all the time in criminal cases? Don't they say "I saw this happen" or "I saw that happen"?

And it may or may not be meaningful to a lay jury, but it is -- it's part of the police officer's experience that then causes him to come to certain conclusions.

MR. HEBERLIG: Well, they can opine on things that are common sense, like "He appeared to be drunk" or "He appeared to be intoxicated" or "He appeared to be speeding," but they can't say "He appeared to have a .32 blood alcohol level."

THE COURT: But they say much more than that. They say much more than that, "It appeared that he was a drug dealer," "It appeared that he was conducting a drug transaction," where it may not appear to -- it may not look that way to anybody else.

MR. HEBERLIG: So that testimony, the Ninth Circuit has said, is expert testimony. That's the *Figueroa-Lopez* case. I can give the Court a cite to it, but for a DEA agent or someone to come in and say "Based on my experience as an agent,

he's engaged in drug transaction activity," that's expert testimony.

And if you'd bear with me, it's 125 F.3d 1241.

THE COURT: I'm sorry, 125?

MR. HEBERLIG: 125 F.3d 1241, Ninth Circuit 1997, *Figueroa-Lopez*.

Lay opinions reserved for percipient observations where the witness can add a commonsense opinion about what occurred, but there's no common sense at all that applies to these accounting principles. They're often counterintuitive and they require specialized expertise that no juror is going to have any basis to understand.

So it's expert testimony, and that triggers the whole panoply of requirements that the Government hasn't met. They noticed Mr. Yelland as an expert in the *Hussain* trial. They did not here, and I think the reason for it's clear. There have been amendments to the expert disclosures rules where the disclosures are now far different. You need to have an expert report signed by the expert that goes through every single one of the opinions to be offered and the underlying bases, and we don't have that here. We don't have anything close to it.

MR. LEACH: They have the notice from the *Hussain* case, Your Honor, in which we said, "We don't think he's an expert; but if you do, here's the basis for what he's going to testify to."

They have his testimony from the *Hussain* trial. They have any number of 302s from the Government's meetings with Mr. Yelland, and they have Mr. Yelland's testimony in the U.K. civil case. So the idea that they don't know what's coming from Mr. Yelland or the bases for what his testimony is I -- I think is vastly overstated.

And everything my friend on the other side is saying applies equally to any accountant who's doing their job in the ordinary course of their business.

Accountants look at paper, they ask questions of their -- of their sales force, they ask questions of their accounting force, and then they record transactions. And what the restatement here is, is financial statements. And the logic of the Defense argument, if applied, would exclude a whole host of testimony about --

THE COURT: So but now I'm going back to counsel. The *Figueroa* case, I -- of course, it doesn't come to mind, which it means I'll go take a look at it -- that didn't involve an accountant, did it? Or do you have a case that involved an accountant in which the accountant testified in the -- a criminal case, in the trial and then was -- and the issue is could he have testified as a percipient witness, could he have testified as a -- I mean, a lay witness can give an opinion. That's not the prohibition that the Evidence Code provides that you can't do that.

But does he have to be declared an expert and then satisfy the requirements?

Is there such a case?

MR. HEBERLIG: We did cite a case. It was actually one of Your Honor's cases.

THE COURT: Uh-oh.

MR. HEBERLIG: The *Pattison* -- the *Pattison* case, P-A-T-T-I-S-O-N. There wasn't a reported decision from you, but you ruled from the bench in a setting like this that this kind of testimony would be expert testimony.

THE COURT: Do you have the cite or is it in your brief?

MR. HEBERLIG: It's in our briefs. It's appended to our brief.

THE COURT: Come on. You have 10 people working on this case. Just give me the --

MR. HEBERLIG: Someone while I'm talking will --

THE COURT: -- cite. You don't have to give it right away, but give me the cite.

MR. HEBERLIG: We'll give it to you. It did go up on appeal. I think it had a different case name. It was *SEC vs. Sabhlok*, and the Ninth Circuit said what was admissible were observations of an accountant, but not opinions, not the type of specialized knowledge here.

And the difference in the kind of testimony my colleague

is discussing is it's one thing for an auditor who did the underlying accounting in real time as part of their job to say "This is what I looked at, this was the accounting decision we reached." That's arguably fact testimony.

But that's not what Mr. Yelland did. He recreated, years after the fact, transactions that he had nothing to do with, in real time, based on information that lawyers and accountants fed him who were doing a legal investigation. It's totally different.

THE COURT: Isn't it sort of a mix? He is there trying to figure out what he's got. He's looking at something. He's looking at books and records of an entity which now they own, and he's going through it to figure out what is the current -- what -- relatively current status of all of these things. He's looking at it because that's the way you have to -- if you're going to operate something, you have to look at it.

Well, I think what you'll find, if you look, we laid it out in Appendix A of our motion, that's not what he testified to. He said that he made inquiries and learned such things as Autonomy never used the software products that it bought.

Well, he didn't specify what those inquiries were at the *Hussain* trial, but we now know from discovery that he was talking to Morgan Lewis or PWC, or maybe even talking to an engineer at Autonomy years after the fact, and then he's just

repeating that hearsay.

It's not his judgment from reviewing a contract or a set of books. He's baking into his testimony, without disclosing it, hearsay and other information that would not be admissible unless, arguably, it's expert testimony. But then we have the problems we haven't received the underlying basis, and the reason why we haven't is HP continues to assert privilege over its communications with Mr. Yelland.

Well, a few of them slipped through the filter. And I believe what happened is the other auditing firm -- Ernst & Young, that was brought in by HP when HP fired Deloitte -- produced some materials pursuant to these MLAT requests. And they had a separate job, if you may remember, to review what Mr. Yelland was working on with the goal of offering their opinion like Deloitte offered in real time.

In the end, they didn't do so. They disclaimed an opinion, but there was back and forth between Mr. Yelland and Ernst & Young about why he was restating certain transactions. And it's only from that source -- and it's partial and incomplete -- that we know, in several instances that we've cataloged in our brief, he went to PWC and Morgan Lewis and said: Do you have any reason or any information that the FileTek StorHouse transaction was not a real commercial purpose and was improperly accounted for?

A short while later, Morgan Lewis and PWC sent an e-mail

to Mr. Yelland's colleague and said, "Yes, despite the fact that the contemporaneous document suggests it was bought for a commercial purpose, we've done some interviews of people" -- unspecified in the e-mail, we don't know who they were -- "and those interviews told us something different."

Mr. Yelland's colleague took that e-mail, it was a paragraph of information, cut and paste it, put it into their memorandum that they sent to EY as the basis for the restatement.

None of that was known at the *Hussain* trial because that document had not been produced yet. And many more like it are still being withheld on privilege grounds, so we have no basis to cross-examine Mr. Yelland and say: Our inquiries determined that that transaction didn't have any economic substance.

The inquiries are not reflected in the documents on that trolley or in the index of materials that counsel says the summary chart was based on. We have no idea what they are, save for this one memorandum and a few scraps of e-mails that made it through the privilege filter. I don't know if that was a mistake on their part or what, but they paint a very different picture than the one that was presented at the *Hussain* trial.

MR. LEACH: My friend is overstating the extent of Mr. Yelland's reliance on anything from PWC or Morgan Lewis. And his rule swallows up what the *Jasper* case says, which is

that even a restatement, even one that follows an internal investigation, even one that is prepared in the context of litigation is, at the end of the day, financial statements.

Mr. Yelland's questions in that one document, which they've cherrypicked, is in the context of: Did your investigation unearth any evidence contrary to the accounting conclusions that I'm required to make under U.K. law and I am required to file under essence penalty of perjury?

And his receipt of one document on that case doesn't undermine his reliance on the underlying records.

THE COURT: Well, isn't another way to look at it is he comes up and he gives his opinion? He gives 12 categories or 5 categories. He says whatever he says. And then either you or Defense counsel comes in and says, "Okay, what did you base Conclusion Number 1 on?"

And he says, "Well, I base it on six things or one thing."

And let's take the easy case, the one thing -- because if it was six things, you could say "Exclude Number 6" -- would you come to the same conclusion? Would it make any difference? And then that's a matter of argument and it's a matter of weight.

Let's say he says one thing and it's inadmissible. It's inadmissible. Then -- then it goes out. I mean, you know, the problem -- the old problem of motions in limine -- I mean, it's not an old problem but it's a continual problem -- is that

you -- is that the balance between admissibility or allowing him to submit it and every opinion having a solid basis in fact sometimes is a function of cross-examination. It's the cross-examination that points out the weakness or the -- of the -- and it could come up in direct as well. I understand that.

MR. HEBERLIG: Your Honor, save for the fact that Rule 16 and Federal Rule of Evidence 702, 703 says the Defense is entitled to know.

THE COURT: Okay. So that's what I have to take a look at.

Okay. So I've sort of addressed in my mind, I've addressed the second part, what we've been talking about, and you're saying, "Look, Judge, you don't have to go there. If he's an expert, they have -- or they were required to give all the bases for his particular opinion, and they should -- he hasn't done that and so he's out." That's your point.

MR. HEBERLIG: That's our point. And if you, nonetheless --

THE COURT: Okay. I'll take a look at that. I'll take a look at that again.

MR. HEBERLIG: I guess the last point I'll make is if you nonetheless decide he's in, then we're entitled to the privilege documents they continue to withhold because they're the basis for --

THE COURT: Maybe, maybe not. When I say you're entitled -- when you say you're entitled, you're saying that for fair cross-examination, you need it.

MR. HEBERLIG: Yes, and we've renewed our request for that.

THE COURT: There's a remedy for that because if you can't get it because somebody is withholding it or the consequences of trying to obtain it are -- you know, involve levels of delay that I don't think -- at least I don't want, then there are other remedies. There are other remedies available.

MR. HEBERLIG: It's a classic short versus sealed. I mean, the remedy is it doesn't come in.

THE COURT: Maybe that doesn't. I don't know. So --

MR. LEACH: I just want to be clear.

THE COURT: Yeah, let's be clear.

MR. LEACH: I don't have a document from HP on this subject that we have not produced in discovery. I think he --

THE COURT: He's not saying that.

MR. HEBERLIG: I'm not.

THE COURT: He's saying they don't give it to anybody.

MR. LEACH: Well --

MR. HEBERLIG: Yeah.

THE COURT: I mean, I got a request to issue a subpoena or something for all those documents, which are not --

MR. HEBERLIG: We have dozens and dozens of Yelland's e-mails with HP's lawyers that are heavily redacted, and they're all around the time period that he's working on the restatement. If his communications with the HP lawyers were designed to gather information for the public restatement, they're not privileged and we're entitled to them.

THE COURT: I'm not going to get into that argument. First of all, Hewlett Packard is not here.

MR. HEBERLIG: Well, they're -- actually their lawyers are here.

THE COURT: Well --

MR. HEBERLIG: I'll give you that cite, if you'd like, Your Honor, to the *Pattison* case.

THE COURT: That's a pretty good rejoinder.

MR. HEBERLIG: It's Criminal Number 08 -- I'm sorry, Civil, it's an SEC case I think; I'm not sure. 08-cv-4238, and I believe it's Docket 173. We attached the relevant excerpt to our brief.

THE COURT: Okay. Thank you very much.

MR. HEBERLIG: Thank you.

THE COURT: So I'll go take a look at that.

Yes, Mr. Leach. You can add anything you want to add. Go ahead.

MR. LEACH: *Pattison* is unpublished and is before *Jasper*, and I don't think should be accorded the weight my

friend suggests.

THE COURT: Okay.

MR. HEBERLIG: A final word, if I may.

Jasper only had to do with the restatement, not whether someone could come in and provide expert testimony about the reasons for the restatement. You have to separate the two. The restatement is just a document.

And the restatement in this case is a sum total of numbers. It's a profit and loss statement and a balance sheet.

THE COURT: Right.

MR. HEBERLIG: It doesn't say anything about any transaction being restated. That comes only from Mr. Yelland. So it's not covered by *Jasper*. *Jasper* only allows, arguably, the business record that's the restatement. We gave our reasons for why it's not a business record; but I recognize *Jasper* says what it says, but that does not control the admissibility of Mr. Yelland's testimony.

MR. LEACH: Then bring in the general ledger entries where the adjustment is made and ask the witness "Why did you do that?"

His suggestion that *Jasper* doesn't cover this, I think, swallows up the case in its entirety and basically means professionals -- an engineer, a lawyer, an accountant, anybody with a degree -- can't explain what they did.

THE COURT: I mean, I am confronted with what seems to

be somewhat of an anomaly to say: The document comes in but you can't explain what -- how you got to what you got to in the document.

MR. LEACH: Exactly.

THE COURT: I mean, if you just say, "Well, here it is, and we have no questions," you know, and -- or they say "Now, why did you make this entry?"

"Objection."

You know, "Sustained."

I mean, it would just -- it would render the document itself meaningless, I think. I think you're -- the conclusion on that score is: Don't let in the document.

You can't explain why you did what you did or what it shows, you can't explain it. I don't understand how it's probative. It's just a series of numbers that are untethered to how they -- how they were ascertained.

Anyway, I'll take a look at the cites and go back to that. Thank you.

MR. LEACH: Thank you.

THE COURT: Now, the Government in motion -- let's see...

Okay. So let me go to the second motion in limine, which is to admit evidence of Mr. Lynch's control, knowledge, and intent. And there were, I think, four items, the testimony from Joel Scott -- pardon me -- the testimony from Joel Scott,

the testimony from Alex Mars, a sales video, and then sort of the image, the James Bond piranha. Maybe there's some other things that are in that group.

Well, as to the sales video and as to the James Bond, I think he had doors named or conference rooms of James Bond and then there was some analogy about piranhas. I think that's all excludable because it's -- its probative value is -- to me, is outweighed by its prejudicial effect.

As to the statements from Joel Scott and Alex Mars, I'm not sure they are excludable because one of the issues -- though, I haven't -- I haven't seen the case so I can't tell you, but I think one of the issues in the case was -- will be: To what extent did this defendant control the operations of the company?

You know, you have CEOs who pay no -- I'm not going to say "pay no attention" -- who do not get into any details, who simply have lieutenants or other employees -- and I'm not passing judgment on it -- just basically running the company, and they're there to make some very big and important decisions.

I think that the statements of Scott and Mars put into perspective the degree to which Mr. Lynch exercised or -- at least in his mind -- and what he wanted to communicate to people demonstrated control.

So I was -- I wanted to make sure that as to Mr. Scott

he's going to testify, my understanding, about his disclosures that happened in the spring of 2012; is that right?

MR. LEACH: It's actually January of 2011, Your Honor.

THE COURT: Oh, it's January of 2011?

MR. LEACH: Yes. Well before the acquisition.

THE COURT: Okay. Well, what I wanted to make sure I understood -- because I have a fairly bright line in my mind -- is that when people discuss events, if they -- if these events took place subsequent to the date of the acquisition, then it's almost like presumptively they're not coming in. Now, there may be exceptions to it, and I think I've already identified one of exceptions, which would be the restatement.

But if, in fact, he's saying something was said to him at a particular time which was post-acquisition, I think I have to have a better idea why it would come in. If he is saying "He told me preacquisition X, Y, or Z," then, assuming it's relevant and probative, that it probably could come in.

Now, Mr. Morvillo.

MR. MORVILLO: Thank you, Your Honor.

I think we're probably not going to quibble with the Government or the Court that one of the key issues in this case is going to be the degree of control that Dr. Lynch exercised over Autonomy and -- as relevant to some of allegations in this case. And so there will be testimony along those lines. Certainly likely far more probative of issues relating to the

accounting and disclosures that will be the center of this case.

I think what we have an issue with, with respect to Mr. Marshall's statement and Mr. Scott's statement are references to the Mafia. You have, I think properly, identified that the Mafia video and the references to the Bond villains and the piranhas have no place in front of the jury here.

And I would submit that comments like this also should be excluded. There are ways to contextualize what -- and paraphrase what Mr. Scott remembers being told, but references to "We're a Mafia family" --

THE COURT: Do I have substitute language? I mean, do -- the point is, yes, it's the Mafia which conjures in a person's mind, I think, complete control and serious consequences for failure to go outside the permissible scope of the control or of the conduct that's at issue. But that's -- that's pretty probative. I mean, that's -- that's called, you know, evidence against you.

You know, you go and you say "I'm going to run this place like the Mafia," well, I don't know. Does that mean -- I guess you can argue: Well, you know, he had no control -- no interest in controlling any of these things. But this gives some --

MR. MORVILLO: This --

THE COURT: -- lie to that, doesn't it?

MR. MORVILLO: Of course, the reference to the Mafia is exaggerated and cartoonish; right?

There is evidence of control. There's evidence of -- that would be appropriate relating to Dr. Lynch's knowledge of certain facts and his involvement in certain disclosure decisions.

But to layer on top of that, an illegal criminal enterprise, what -- there is no allegation in this case that there were any murders or extortion or bribery or RICO activity. And layering and allowing the jury to hear evidence about such conduct in an offhand comment like this, I think does cause severe prejudice and outweighs any probative value from whatever testimony they have to offer about how they felt that Dr. Lynch controlled things.

And these -- both of these statements relate to and are part of a broader conversation where the reference to the mob doesn't have to come up. It's about -- one is about co-piloting and "Don't tell the pilot how to fly the plane." That's fine. That's different. But when it gets into references to the Mafia, which are obviously joking in the context and they have no probative value into what's actually happening in the moment --

THE COURT: Well, the joke -- the joke is that you're not going to -- the joke is you're not going to be

assassinated. That's the exaggeration. If you don't do X, you're not going to be taken care of as the way the Mafia would take care of you. That's the joke. It's not a good joke but, I mean, that's the joke.

But what he's trying to communicate -- at least arguably what he's trying to communicate is "I am serious about controlling the manner in which this company operates."

And then you couple it with -- I thought there's some evidence, but I could be wrong in this -- that he maintained -- he insisted on having authority for approving all expenditures over a certain amount. I don't know what. I thought -- my recollection is there's some evidence of that.

MR. LEACH: $30,000.

THE COURT: $30,000.

Well, then you start to -- you start to get an appreciation of the degree to which he is controlling the company. And as you candidly said, that's -- indeed the Defense in part -- in part -- is going to explore the degree to which he did control the company because there -- there may be people who did all sorts of things. Maybe. Arguably. That's what the Government has said. And to what extent was he involved in any of this? Involved in a -- maybe not a specific sense but in a general sense?

I don't know. I -- I think it does come in. If -- if there's something better than the Mafia that you guys can agree

on, I'll be glad to consider it.

I don't like the word "Mafia." I agree with you, Mr. Morvillo, but those were -- those were allegedly your client's words. Not -- nobody picked them up and picked them out.

MR. MORVILLO: And I understand we can cross-examine the witness as to whether they understood it as a real threat to them or whether it was a joke or the context in which it was made --

THE COURT: And they say, "Well, we thought the whole thing was a joke." I mean -- and, sure, they can say that, and they'll either be believed in that regard or won't.

MR. MORVILLO: But, of course, you go down that path and then they start to say things, "Well, that's the way it felt to me. It did feel like the mob." And all of a sudden you're in a situation where these cartoonish images of mobsters and gangsters are planted in the jury's mind.

THE COURT: I think this is one of those things that, to some extent, it depends. You know, if it's just the only evidence standing alone out there for which the Government is relying that that shows he controlled the operation, I think I'd be more sympathetic to your position.

If it's part and parcel of a woven tapestry where they're going to show this piece and that piece and that piece and that piece and that piece -- which is my sense of what they are

going to do because that's what they did in the last case -- then it becomes -- it becomes meaningful and probative.

Because one of the questions always is: Why didn't somebody say: Well, where are the whistleblowers? Where are the people who say "Stop. I'm not doing that. That's a violation of this or that"? Why didn't they say that?

That's what -- if I were on a jury, that's what I would be thinking. Why didn't -- if they are actually engaged in what the Government says that they were engaged in, then why didn't they -- why didn't they say something?

To some extent this and other pieces may explain that. It may not, you argue. You're not going to be cut off.

Okay. Let's move on.

Okay. So let's go to -- we might as well take on the -- your experts.

Who is going to address this? Okay.

MR. HEBERLIG: Our motion or the Government's?

THE COURT: Well, I'm looking at the Government's motion. The Government's motion, it's Number 3, and it's the motion to exclude expert testimony.

We have Mr. Cerf, Mr. Taylor, and Mr. Levitske.

The one I -- let's -- I would allow Greg Taylor to testify. I mean, I don't think we need any -- now, the argument is: Well, he's got all these opinions out there on all these accounting standards that have nothing to do with

this case.

Really? Okay. If they don't and you ask him a question and he gives that "Well, according to Accounting Standard Number 16," or whatever it is, then the Government objects.

I mean, it's like anything else. They say it's irrelevant, and I've sort of -- I think I have in mind the Government's argument. I have in mind -- I don't know that I have necessarily in mind your argument, though. I think you will explain why you think it's relevant. Okay?

And I'm just not going to sit here today and try to weigh, because I think it is a weighing proposition, this opinion. I think he comes in, and subject to any objection the Government has as to any aspect of his testimony. I'm not going to have a separate *Daubert* hearing so we're going to do it once. Then it depends. It depends. I would let that in.

MS. GREEN: Your Honor, may I be heard briefly on one aspect of the Taylor report?

THE COURT: Sure.

MS. GREEN: So I divide the Taylor report into two categories. The bulk of the report, the main part of it is, as you said, on the accounting standards, we don't believe that's relevant. Fine. We will defer to Your Honor on that.

But my real issue is with Appendix 3 of the Taylor report, and I don't know to what extent they are planning to elicit testimony from that appendix; but in that appendix, what he

does is take statements from Mr. Brice's report and then just assert, with no basis for that assertion, that he disagrees with --

THE COURT: Assert, yeah, okay. Guess what? I've done this for 25 years. I've heard experts get up and say "That person can't be believed. Can't be believed."

I say, "Oh, really. Why not?"

"Well, I don't have any reasons. He just can't be believed. I saw him. I don't like him."

You know, that's called cross-examination. That's what it's about.

Now, Mr. Cerf is in a slightly different position because -- and you can tell me if I got it wrong. When I read through the Cerf proffer, Cerf is going to testify as to -- I'll use the word "practices," but I mean a lot more than that -- that exist or existed at the time of the acquisition as viewed by an individual or a company or the public or regulators or whomever as either adhering to or contrary to practices that existed in the United Kingdom, and that's what I thought.

So I read that. And I thought to myself: So what? So what? You know, there would have been -- the "what" could easily have been answered if in the agreement, that is the merger agreement, it was said, "By the way, we are producing all of this," or "we are making these representations based

upon -- solely based upon standards that have been adopted by the United Kingdom without reference to any international standards of accounting."

If they said that, assuming the Government would indict, we'd be here and we'd listen to hours of what happens in England or the United Kingdom, but that's not -- number one, that's not what happened.

Number two, it would -- I will certainly grant the -- you the possibility that the English system is quite different. Maybe it is. Maybe it isn't. But it certainly could be. They have different standards, different practices, different procedures. I got all that.

And if he was being tried for his failure to adhere to the regulations of the United Kingdom in this transaction, it would be that case. That's not this case.

If I -- if the Government got up and said, "We think he violated U.K. Principle Number 62" -- whatever it is, Accounting Principles -- so what?

I mean, there may be a "what." There may be some explanation to it, and it may have some probative value. But this, to me, Mr. Cerf's testimony in its entirety, is exactly what you don't want in a case for a judge to be a gatekeeper because it is -- it is putting forth to the jury an alternative regulatory and practical structure of how business transactions are conducted in a place other than the United States of

America.

By the way, they may be great -- they may be a preferable structure. I'm not -- I'm not trying to give an evaluation of it. It's an irrelevant structure, unless the argument is going to be made -- and I have to watch this, I'll give you this -- if the argument is going to be made -- and I don't know whether it is or not -- that, look, Mr. Lynch thought because of his -- because of his experience, location, he thought that he was in compliance with British standards and they were British accounting standards and so forth, and they were the operative standards, then I guess what I'm saying is I don't know.

I mean, I would say -- and this may seem like a weasel way out of it, but I'd say it depends. He hasn't testified in front of me. I don't know. You know, I don't know if he's going to testify in this case. I mean, I never ask the Defense that. It's none of my business. You make that decision hopefully one day before he is to be called. I mean, and at least that. I mean, if you're going to -- you can make it earlier, but that's not something that's required of him.

And I don't operate on cases to say, "Okay. He's going to testify so we're going to let this in or not let it in." If he's going testify and if it becomes relevant, then I will consider Mr. Cerf's testimony.

Otherwise, I find it classic -- is it 403? Is that the right code section? Yeah. Out.

Finally, Mr. Levitske.

MR. HEBERLIG: Can I just --

THE COURT: You want to take a stab at Mr. Cerf?

MR. HEBERLIG: I think you may misunderstand the point we --

THE COURT: Go ahead.

MR. HEBERLIG: So there will be witness testimony from HP executives about the due diligence process, and I believe all of them will say it was their first time going through the acquisition of a U.K. company. They will testify, or at least they did testify in the *Hussain* trial, that Autonomy was very tight and limited in what it disclosed in due diligence, and I believe some will say "to the point that we believe they concealed information from us."

What Mr. Cerf provides is relevant context for the nature of the disclosures that occurred during a U.K. company takeover where the relevant point is in the U.K., whatever you disclose to the bidder also needs to be made equally available to any company that comes in with a competing offer -- which is unlike acquisitions in the United States. You can't NDA your way around that.

So the reason why this is relevant, there's an explanation for why Autonomy was close to the vest in what it disclosed; and as Mr. Cerf opines in his report, it's only when you get very close to the acquisition that the disclosures occur.

THE COURT: So you're saying there's an alternative explanation?

MR. HEBERLIG: To?

THE COURT: There's an alternative explanation. One explanation is he didn't want them to see these -- what was actually happening in the company. That's one explanation.

MR. HEBERLIG: Sure.

THE COURT: That's certainly the Government's explanation now.

But you're saying: No. There's an alternative explanation, and that is under the rules of the United Kingdom in mergers and acquisitions he wasn't required to do so, or he did it in a particular way.

MR. HEBERLIG: And there was testimony from the Government witnesses in the *Hussain* trial, but people who were not experts in the UK takeover procedures and law because it was their first time having gone through it. So this is just context for the disclosures.

THE COURT: Well, context. Context matters. But did he at all? Is there anything in the agreements -- and I have to tell you, it's been a while since I've seen it -- which discusses the standards to which statements are going to be -- documents are going to be produced and -- or not produced and standards which are going to be applied or not applied? Is there anything in all of that, all of those agreements --

MR. HEBERLIG: Yes.

THE COURT: -- that reflect that it was the British -- the British system and not the -- some other system that was operative?

MR. HEBERLIG: Yes, absolutely.

THE COURT: There is?

MR. HEBERLIG: I'm happy to explain what they are if you'd like.

THE COURT: Go ahead.

MR. HEBERLIG: So there was an agreement between the parties about, you know, what information would be exchanged and how it would be treated confidentially. HP's first draft to Autonomy said, "You need to provide to us all documents we reasonably request." And that language was struck out by lawyers, outside lawyers -- this wasn't some backroom deal -- and the language was: No. Under the British system, it's effectively *caveat emptor*. We only disclose what we need to disclose because under the UK takeover laws, whatever we give you, Oracle could show up tomorrow and say "Give us the file." And they're our competitor; and if the deal doesn't go through, we're mortally wounded in our business dealings there forward.

There was no guarantee until the day the offer was made that this deal would go through, and so that's why the information is withheld and kept close until the very late stages. And I think you'll hear testimony at trial that HP

never came back around and said, "Give us the core stuff that you've been holding on to" because they rushed the due diligence.

And they had a deadline and they wanted to announce this on August 18th, along with a whole host of other bad news that HP had that day. But this is complete context. The UK takeover -- I don't think the Government will dispute this -- the UK takeover law and standards governed this acquisition. It was not a U.S acquisition.

THE COURT: What about in terms of making representations? In terms of the mechanics of how to go forward, I understand that there was some negotiation. I understand that Hewlett Packard actually had very limited, if any, very limited rights of due diligence, very limited. They exercised some of them, I think. Didn't they ask "Give me your 10 best contracts" or something like that at some point?

But I'm trying to figure out, if you look at the deal as the deal was negotiated, what difference does it make that there was a practice in the United Kingdom which -- which acknowledged or sanctioned -- sanctioned in a good way -- sanctioned the withholding of certain documents?

Is -- because he's not being accused of violating what -- the -- he's not being accused of violating the English standards. He's being accused of violating the standards that they've agreed upon in the deal, which I understand are, in a

sense, international standards, they're accounting standards. And both Hewlett Packard and Autonomy agreed that those were the standards.

So now we have different standards, and what you're telling me is that it may be -- I don't know that I would cut you off. From an expert point of view, I'm cutting you off, because, again, I haven't heard Mr. Lynch.

He says, "Well, look, I didn't -- you know, I didn't produce these because we didn't have to produce them, and that's the way we do it in England." And that's right.

Well, maybe that does, to some extent, affect his state of mind. I don't know.

MR. HEBERLIG: Okay. That's fine.

THE COURT: But we're not there yet.

MR. HEBERLIG: Understood.

THE COURT: Mr. Levitske.

MR. HEBERLIG: Yes.

THE COURT: Mr. Levitske is a bit of a mystery to me. I don't know what he's saying. I can't make it out.

Now, you can say, "Well, Judge, you're tired. You've done this so long, you're not really concentrating on this thing." But he uses terms -- I forget where they are -- little in, late in, last in, first out, something else.

So what I'm going to do with Mr. Levitske, before getting into it, is accepting the Government's suggestion of a

supplemental disclosure pinpointing the bases for the opinions that he's given. Because as I read the -- Mr. Levitske's opinion, it just doesn't make any sense to me.

Now, that's okay. I'm not the trier of fact, but I think it is a good idea to try to make some sense out of it and then I'll decide if you can.

MR. HEBERLIG: Well, first of all, they're not asking for a supplementation of his opinion. They fully understood his opinion. Their expert wrote 19 pages in rebuttal and offered three different appendices to rebut it. So it's not unknown to them what his opinions are. They quibble about a few of the inputs.

And I submit that his disclosure was more than sufficient as evidenced by the rebuttal we got from their expert, but the testimony is very straightforward.

I mean, I understand there are a lot of numbers, but I can boil it down like this: Plenty of Government witnesses testified, "Oh, my God, had I only known about the hardware, this company would have been worth so much less."

Okay, that's one category of the transactions.

So we asked Mr. Levitske: Assume the hardware transactions never occurred. Would the company that you're looking at be worth more or less?

He stripped out the hardware revenue, the hardware expenses, and what was left was a company that had more profit,

was growing faster, had more cash on hand; and as he opined, all things being equal, under a discount cash flow model -- which is the standard in evaluating a mature company like Autonomy -- it would at least be worth the same, if not more.

THE COURT: Look, maybe you've done it. I'm not asking you to do a lot. Do the supplemental because, number one, I think the devil is in the details. How you are -- you've come to the conclusion it's worth a lot more or it's worth more.

MR. HEBERLIG: Not more. The same.

THE COURT: Of course, what troubles me about all of that is that's not what Hewlett Packard was buying. Oh, if they were buying -- let's say I sell something and somebody wants diamonds, and I say "Here's a package of diamonds. It's worth $50 million," and actually -- actually, it has something else in. It doesn't have -- it has some diamonds and it has some this or that or other things, and you put it all together and it's 50 million. Is that a fraud? Is that a fraud?

MR. HEBERLIG: I'm not sure I follow the Court's example.

THE COURT: If I go to you and you want to buy -- and I say "I have $50 million of diamonds to sell you," and you say, "Great. I'll buy it. I'd like $50 million worth of diamonds. I'll give you $50 million for it," and I give you a sack, and in it are diamonds and other things, the total value

of which, commercially, is worth more than 50 million, have I -- have I committed a fraud?

MR. HEBERLIG: I'd say they got a helluva deal. And that is, I mean, frankly similar to what we're talking about here.

THE COURT: They say that I'd say that they were defrauded.

I'd say that part of the problem you have here is, yes, you can argue, back out all these hardware sales, if the hardware sales are a component part of the value and I think -- I think that's what the Government says, but they can't quite figure it out from Levitske's report -- then I have to -- I have to wonder, when you are selling something representing it's X and actually it's X plus Y, and they don't want Y -- they don't want Y, why there's no fraud -- that because what you do get, you do get the witnesses who say, "Well, if you knew it was X plus Y, total value of which was more than 11 billion, would you have bought it?"

And then I anticipate they'll say "No."

And you say "What do you mean? We think it was worth 17 billion." That's what you do, you say you think it's worth 17 billion.

And they say "Because we didn't want to go into that kind of business. That's not what we were interested in. We're trying to do something else. Maybe we're wrong. Maybe we're

not reflecting the market. Maybe we're getting ahead on our skis, but that's not what we bought. We bought $50 million worth of diamonds."

Now, I know you're telling me -- I got this -- there were $50 million worth of diamonds there, and what I'm saying to you is: Levitske doesn't do it for me because he's very unclear as to how he does his accounting. And so I'm giving you another run at it, but you've got to supplement and explain how he comes up with the figures that he comes up with.

MR. HEBERLIG: That's fine. I mean, it's a couple of additional mathematical points, but the opinion is the same.

And, I mean, I guess I didn't respond well to the -- I think I understand the hypothetical now in real time. I think you're talking about the difference between deception and fraud. Fraud you've got to deceive someone to cheat them out of property, but in the example you gave you haven't done that. You've given them all the property they bought and more. It's just a little different.

And there are plenty of federal cases. I mean, we can supplement our briefs, but there is a difference under federal fraud laws between deceit and fraud. And in the example you gave, and in the opinion Mr. Levitske would give that it was worth the same, no one's been defrauded.

THE COURT: Okay. You're saying they may have been deceived but they weren't defrauded.

MR. HEBERLIG: Correct.

MS. GREEN: I think taking the hardware would be a perfect example of that. By not -- you know, HP thinks they're buying one thing, that was your hypothetical, in fact they're buying 60 percent of one thing and 40 percent of hardware.

The nature of that revenue is very different. It's low margin. If they didn't want -- in our theory, they didn't want hardware -- a company doing 40 percent of hardware. They wanted a software company, for example. So I do think here the theory of fraud is what -- the nature of the transactions and how that was represented.

THE COURT: Well, I'm sitting here trying to figure out the difference between deceit and fraud. So you've given me something to think about. I will -- I will -- I'll think about that.

Anyway, you're going to -- you're telling me, "Hey, Judge, this is easy. We'll do it." So great.

MR. HEBERLIG: May I just -- I guess one way that this problem --

THE COURT: I'm not excluding it right now.

MR. HEBERLIG: Okay.

THE COURT: I mean, I'm just -- and I'm trying to get you to prepare for trial too at the same time.

MR. HEBERLIG: One way that may obviate this issue and we may not need, you know, an expert like Levitske, I don't

think it was proper for Government witnesses who are not experts in valuing companies to opine on the stand that "When I learned about the hardware, oh, my gosh, all of a sudden I believed the company was worth far less."

I mean, Levitske's opinion is relevant to that kind of testimony. That's not an element of the offense and it's uninformed opinion speculation. So if there's a policing of that kind of testimony and it's not admissible from Government witnesses, we may not need to call someone like Mr. Levitske.

THE COURT: No, I think you need that testimony because the jury is not going to know. "So what?"

They all look at this thing and say: So what? Okay. So it wasn't all -- it wasn't software. It was some hardware. So what? Like they know the difference. You know -- and there has to be some explanation: We don't do hardware. We don't do windows. We don't do this. We don't -- we don't do hardware or we don't want hardware, maybe.

MR. HEBERLIG: That may be okay, but to then say "And had we known about the hardware, the company was worth far less," they're not informed and they don't have the expertise to give that opinion.

THE COURT: No, it's not expertise. That's not an expert opinion, I don't think, but it's certainly subject to cross.

MR. HEBERLIG: Understood.

THE COURT: Okay. Motion to enforce -- oh, look we're already at Number 5 of the Government's, motion to enforce defendants' reciprocal discovery obligations.

All I say is we all recognize a reciprocal motion; right?

I'm getting a number of nods that aren't on the record. So I'm looking at the Defense.

Mr. Lincenberg, why don't -- you haven't said anything.

MR. LINCENBERG: We understand our obligations, Your Honor.

THE COURT: Okay. And your obligation is to provide reciprocal discovery; right?

MR. LINCENBERG: Yes, Your Honor.

THE COURT: Great. Okay. So I'll just sit back and assume you've done it or will do it -- have done it; and if something comes in and they say "What's this," we'll see. Okay?

MR. ABRAHAMSON: Thank you, Your Honor.

THE COURT: Well done.

MS. KOELEVELD: The same goes for Dr. Lynch, Your Honor.

THE COURT: Pardon me?

MS. KOELEVELD: The same goes for Dr. Lynch. Thank you.

THE COURT: Yes, yes.

Okay. Great. Thank you so much.

THE CLERK: Counsel, please remember to identify yourself for the court reporter. Thank you.

THE COURT: Okay. Motion to admit statements of the agents and co-conspirators and exclude -- offered by defendants.

Well, statements of Autonomy employees, statements of co-conspirators. I'm deferring on all of that because I don't know what the statements are, and it depends. What is the statement?

MR. ABRAHAMSON: Zach Abrahamson for the United States.

Understood, Your Honor. We think that, as to the specific statements themselves that we're going to be introducing, those have been disclosed to the Defense in pretrial discovery, but we understand Your Honor's wish to defer the subject until trial, and we're happy to proceed on that basis.

THE COURT: Okay. We're on such a roll here, I'd like to continue and see if we can finish this.

Okay. Let's take Mr. Lynch's motion. Motion to admit post-acquisition evidence.

Well, this the constant tension that exists in this trial and existed in the previous trial; the battle between what happened pre and what happened post, and that the way you understand this transaction is to -- the only way to understand it is to look and see what happened post.

Hewlett Packard ruined the company or didn't market it. Hewlett Packard was in a necessitous position. There were politics going on with respect to the board of directors and leadership, and all sorts of things were happening, and what came out of it -- and scapegoating, and what came out of it ultimately was an accusation that fraud occurred with respect to a purchase that Hewlett Packard made. That's the theme.

And I am -- I have no opinion about whether that's correct -- any of that's correct or not. But I do have an opinion as to whether or not it's coming in in this case, and it's not. And the fraud occurred, if it did occur, at the point of the acquisition.

Now, there can be certain exceptions to allowing events that took place subsequent to the -- to the acquisition, and I think the restatement is a classic example of it. The restatement occurred subsequent to the acquisition. They did that work subsequently, but they're looking back at preacquisition.

And so I actually think that -- that you can cross-examine Yelland on the restatement -- basis for accepting the restatement as being a more accurate version of the condition of the company preacquisition is highly relevant, and -- but events that took place that -- pardon me -- that may have confirmed the judgment, supported a judgment, corroborated a judgment subsequent, while it arguably could be relevant in

certain proceedings, it's the Court's view that it's -- it's -- that its relevance is -- and probative value is clearly outweighed by the undue consumption of time, the effort, the trials within trials that would be necessitated by looking at any of the post-acquisition events.

So when a post-acquisition event is being offered by a party, it should be run by the Court outside the presence of the jury. And I'm not one who likes these particular things; but I think, as a general rule, that's the principle. I can't -- I'm not going to go piece by piece by piece today because I think the principle basically swallows all of these pieces.

I think, though, that it's important for the Defense to establish that they turned over the books and records of Autonomy upon the acquisition or shortly thereafter. I don't know when it actually occurred. We did that by way of stipulation. I think it can be done by way of stipulation. We don't need a witness on that.

MR. ABRAHAMSON: Your Honor?

THE COURT: Yes.

MR. ABRAHAMSON: Just to clarify the record and avoid the number of sidebars in the trial --

THE COURT: Yes, I'd like to do that.

MR. ABRAHAMSON: -- should we take from this colloquy that the waterfront of post-acquisition events contained in the

parties' briefing on this matter is presumptively excluded, with the exception of Christopher Yelland's restatement?

THE COURT: Yes.

MR. ABRAHAMSON: Okay.

May I have just one moment to confer, Your Honor?

THE COURT: Yes.

(Government counsel conferring.)

MR. ABRAHAMSON: Thank you, Your Honor.

Nothing further from the Government.

THE COURT: Okay. Second motion, Mr. Lynch's motion, motion to exclude restatement. I've already addressed it.

Motion to exclude opinion testimony of Chris Yelland, I'm coming -- oh, Mr. Weingarten.

MR. WEINGARTEN: Yes. I wanted to say -- I wanted to say --

THE COURT: Am I running right by your field of expertise here?

MR. WEINGARTEN: You did.

THE COURT: Go ahead.

MR. WEINGARTEN: Look, I've been here before. We've talked about post-ac a number of times.

THE COURT: Right.

MR. WEINGARTEN: In the most fundamental way, we think this subject is central to our defense. In a word, we don't think HP was defrauded. I think in a word, we believe there

was no fraud on HP by Mike Lynch.

And there are so many instances where it is obvious to us, and apparently we've not made it clear to the Court, that there's exculpatory evidence based upon the record to date, post-acquisition conduct by Mike Lynch.

Just by way of example, he went to work there. He would have to be the largest idiot in the world to go to work at HP when the first day at work HP is going to have his books if, in fact, there was a fraud. He went to work there. He didn't go to Namibia and hide.

In addition, there will be evidence that there were discussions as soon as he got to HP about hardware that he participated in. How in the world can we conduct this Defense without introducing such evidence?

THE COURT: You're going to have to do your best.

By the way, in Namibia? That's where the giraffes are; right? You can't hide anything from the giraffes.

So, anyway, I understand what you're saying and you have your record. A similar, but not identical, argument was made in *Hussain*'s case. Similar. That they were entitled to bring in post-acquisition evidence.

And, listen, maybe we'll never get there. Maybe we will get there. I don't know. But there is -- it's clear to me this becomes an entirely different case. It becomes who -- who and what impaired Autonomy? Who and what did what and when

to -- to Autonomy and who is responsible for it? That's -- that is years of testimony.

MR. WEINGARTEN: Judge, can I -- I anticipated time might be an issue in terms of the post-ac stuff. We represent to the Court that if we are allowed to introduce what we think is absolutely necessary to our defense, it would take one trial day.

THE COURT: Oh. What about them? What about the Government then wanting to rebut all of that? I mean, you can't -- you can't do it that way.

Anyway, thank you, Mr. Weingarten. I appreciate what you said, and I'm not going to allow it, but your record's there.

MR. WEINGARTEN: Okay.

THE COURT: Okay. Motion to limit expert testimony of Steven Brice. Denied.

Motion to exclude certain categories of evidence. Well, of course the video is out. Dr. Lynch's house is out. I mean, we're not -- we're not showing the jury who may or may not be favorably disposed to people who have a lot of money. The money itself is there. The fact that, as I understand it, his wife earned 6 -- or obtained $16 million in this transaction, if that's true, that's there because it does go to motivation.

How he spent the money? Irrelevant. I mean, unless there's some nexus to he needed this money because he had to and, therefore, that explains why he did what he did.

But, no, I don't -- we're not -- he's not on trial for being a wealthy person, and he's not on trial for acquiring things which wealthy people can acquire. That's not -- that's not appropriate. So that's all out.

Mr. Morvillo?

MR. MORVILLO: I'm sorry, Your Honor. I didn't want to interrupt you.

THE COURT: You were anticipating.

MR. MORVILLO: The jury is certainly going to hear that Dr. Lynch made a significant amount of money on the transaction, $800 million or some such.

THE COURT: Right. They'll hear that.

MR. MORVILLO: They will hear that.

THE COURT: Right.

MR. MORVILLO: That's certainly coming in. Why the jury needs to hear that his wife made $16 million on top of that seems to fall into 403 land. There's really not that much probative value when $800 million is earned by the defendant.

THE COURT: I'm not exploring. I don't know about relationships. I don't know how things are divided. I don't know community property laws -- if there are. I don't know who gets what. I'm not interested in it. I mean, I just think that's undue consumption of time, but I think it's important. It is -- it is a logically motivating factor for a person's conduct whether --

MR. MORVILLO: She's no different than any other shareholder in the case, other than her relationship with her husband.

THE COURT: Well, it may be that we leave out 16 million and we simply say "As a shareholder, she benefited in some sum of money."

MR. MORVILLO: That's fine. That's fine.

THE COURT: There you go. You got a victory. There you go.

MR. MORVILLO: Thank you. I'm going to sit down now.

THE COURT: No, no, stand up. You're doing very well. Okay. So joint motion to preclude misleading accounting terms and improper hypotheticals.

MR. MORVILLO: Your Honor, I'm sorry --

THE COURT: Yes. Go ahead.

MR. MORVILLO: -- before we move off of this motion --

THE COURT: Yes.

MR. MORVILLO: -- there were issues relating to some 404(b) that were tied up in the prior motion that we were just discussing.

THE COURT: Okay.

MR. MORVILLO: The issue with respect to the analyst Daud Khan being excluded from earnings calls and --

THE COURT: My recollection is I let all this in in the earlier trial --

MR. MORVILLO: You did. You did, yes.

THE COURT: -- and I'm adhering to that ruling.

MR. MORVILLO: So that you're --

THE COURT: It's in.

MR. MORVILLO: -- you're going to allow it in?

THE COURT: Yeah.

MR. MORVILLO: It does predate the alleged conspiracy.

THE COURT: Yeah. Still it can come in. It can come in, can't it? Is there some -- I mean, you're talking about what the habit, the custom, how it was done?

MR. MORVILLO: I think what winds up happening with the Daud Khan situation is there are explanation as to why that happened that have nothing to do with the allegations in this case. It happens.

THE COURT: Okay. I'll listen to it.

What does the Government say?

MR. LEACH: Your Honor, the events relating to Daud Khan span from 2008 through 2010, so kind of straddle the time period of the conspiracy, and it's relevant to showing the way Dr. Lynch reacts when he hears somebody is critical of his company.

He -- first, he threatens Mr. Khan in a meeting that Mr. Khan will testify to, and this occurs in 2008.

Second, he excludes Mr. Khan from participating in analyst calls, which is highly unusual, highly extraordinary, and we

think probative of a consciousness of guilt and a sensitivity to having his accounting judgments and his numbers questioned.

Third, they launch a pretextual investigation of Mr. Khan by the FSA -- which goes absolutely nowhere -- in an attempt to silence him from being critical of the company.

And it's only in -- so we think all of this is relevant to his state of mind, his following of the -- of what's happening on the analyst calls and how the market is reacting to even what they're going to argue is dissident criticism. And so for all the reasons this was relevant in *Hussain* they're relevant even more so in this case because Dr. Lynch is in the room making the threat to Mr. Khan. He, we argue, is acting through his general counsel, Andy Kantor, with respect to excluding them from the calls; and we think it's highly probative of his state of mind, his control of the company, and his reaction to negative news.

MR. MORVILLO: The problem is, of course, it happens almost a year before the relevant events in this case, and it is going to cause perhaps a -- quite a bit of a tangent in terms of explaining the context of his exclusion, the report to the FSA, the background, the concerns that Dr. Lynch had with the inaccuracies that he perceived to be in Mr. Khan's report. There will be substantial, potentially, testimony about all of this.

THE COURT: Well, so the answer is if the Government

thinks it's so probative, they make that determination. And I think it it's arguably probative if, in fact, it invites the type of response you're suggesting it does. You're not precluded from responding.

So, let's see, the accounting terms, improper hypotheticals, please have your witnesses try to explain in English what they're talking about so at least there's a possibility that the jury will be able to follow it. So I'm not going to sit here today and talk about improper hypotheticals or the wrong term.

Motion -- you have Mr. Chamberlain's motion, motion to exclude evidence violating the confrontation clause.

Well, yes, Mr. Morvillo?

MR. MORVILLO: I'm sorry. I just want to go back one second.

Part of the motion that we were just discussing relating to Mr. Khan relates to a subject called organic growth, and the question that that raises is to calculate organic growth -- and I'm happy to explain what organic growth is if it would help the Court -- you need to go back years.

And to -- if the Government is going to allow the testimony of analysts to talk about organic growth, which is a method for -- that's not an IFRS function, it is not a legal obligation, it's a company-defined term. If they're going to permit analysts to testify that there was a misrepresentation

of Autonomy's organic growth, we have to go back in time, in history, to look at the -- what the organic growth issue or misrepresentations are linked to.

It's a way of isolating revenue from acquisitions to show that what -- how the company is growing is just based on its own product, and so you take out revenue from acquisitions and you look at the organic IDOL growth. To do that, you have to look at what the acquisitions were, when the acquisitions occurred; and if we look at what we have seen from some of the analysts, they're talking about acquisitions that occurred in 2005, 2006, 2007 to lead up to an argument that, in 2009, organic growth was overstated.

And so that opens up a whole history of discovery and allegations and issues with respect to the acquisitions and the purpose of the acquisitions and the revenues and the growth from those acquisitions that should be cut off here.

Now, if the Government is just going to introduce testimony relating to organic growth in the relevant time period, that's a different story, but it still could impact the history.

THE COURT: Mr. Reeves?

MR. REEVES: Your Honor, when Dr. Lynch went to Palo Alto in early 2011 and met with executives representing HP and pitched the sale to HP of Autonomy, his best and principal argument was the organic growth history of his company.

Counsel is correct, to understand the deception associated with that lie -- set of lies, it is necessary to look at the acquisitions that happened historically. That's exactly what the analysts testified about during the relevant period. They're constantly endeavoring to understand what the demand was for IDOL, the core product of Autonomy, as versus how the growth may be established or what part of the growth related to the acquisition of different companies.

There are three companies that are relevant here -- Varity, Zantaz, and Interwoven; and I think in order to understand the analysts' testimony about the importance of organic growth and in order to understand the nature of the deceptions that Dr. Lynch and others on behalf of Autonomy gave to Hewlett Packard, some amount of discussion about those acquisitions is necessary.

I do not agree that this is a distraction. It will be difficult. It comes through the witnesses that we've already identified. And so I accept the fact that this is a relevant argument to the period in question or that's alleged in the indictment, and it will require some historical look-back around those acquisitions, but I do not believe that the evidence is automatically a distraction or a trial within a trial or going to take too much time.

MR. MORVILLO: There's a whole host of discovery that we don't have relating to the -- there's a 2006 acquisition of

Varity, a 2007 acquisition of Zantaz. All of this is predating the period for which we have discovery and the allegations in the indictment, and so it really is a sideshow.

THE COURT: But I don't know that the Government has it.

Do you have it?

MR. REEVES: No. If we have it, they have it, certainly with regard to the acquisition issues.

THE COURT: Okay. Well, okay.

MR. MORVILLO: Then we're in a situation, Judge, if this is going to be relevant, we're going to need to issue subpoenas to HP to get these records.

THE COURT: Well, that depends. It depends on what they say about it. It depends on what they say about it. Then it depends on the extent to which you want to contest it, and it depends on how important it is. It depends on all of these things that I can't rule about -- rule in advance.

MR. MORVILLO: Well --

THE COURT: I can rule it's either in or out. And what the Government says is it's really integral to the sales pitch that was being made to Hewlett Packard.

Now, he can be wrong, maybe. There's no evidence of that. In that case, you won't have to do very much. But he may be right, that it was said and important; and then the question is: How do you address it?

MR. MORVILLO: Well, that is the question, Judge; right? How do we address it? When an analyst stands up here and says that the accusation of Varity was not as important to the company as they led the public to believe, how are we supposed to respond to that when we don't have discovery relating to it?

THE COURT: I'm not sure you don't have discovery relating to it. I don't know where the documents are.

MR. REEVES: If -- to the extent we have relevant discovery relating to the acquisitions, it's been produced.

THE COURT: Witnesses testify all the time, all the time without documentation to back up their assertion. The Government's obligation is to provide the documentation to the extent the Government has it. They tell me they have it somewhere in their 20,904 exhibits. If it's there, it's there.

MR. MORVILLO: I don't believe it is. That's the problem. We're going to have witnesses coming in starting to talk about things that they're not HP employees, they're not Autonomy employees. They're analysts who are going to come in and talk about their notes from 2007, 2008 that we are left to just confront on cross-examination their recollections, but there is likely contemporary documents from that time period that are highly relevant.

THE COURT: But they say if those documents exist, you have them.

MR. MORVILLO: Well, they have not sought them from HP.

THE COURT: Well, then they don't have them.

MR. MORVILLO: They don't have them. We don't have them, but --

THE COURT: There's no obligation they have to.

MR. MORVILLO: Here's the problem, Judge, of course, because the conspiracy starts in January of 2009.

THE COURT: Whenever it starts, they don't have to -- they don't have to -- even if it happened on the last day of the conspiracy, they don't have to get the documents. That's just the way it is.

MR. MORVILLO: But we should have a right to issue subpoenas to get documents relevant to a relevant allegation in the case.

THE COURT: Well, I'm not ruling on your trial subpoenas. That's up to you.

Okay. Turning to Mr. Lincenberg.

MR. HEBERLIG: Your Honor, may I address one issue before we move to Mr. Lincenberg?

THE COURT: Yes.

MR. HEBERLIG: Thank you. It's Brian Heberlig again, Dr. Lynch.

This relates to Mr. Brice. It's not asking the Court to revisit the ruling on the motion, but there is some interplay

between the testimony that you're considering of Mr. Yelland and the testimony of Mr. Brice.

And you may recall in the *Hussain* trial that the Government was essentially given a choice as to which witness to call. And so our request would be if the Court permits Mr. Yelland to give expert opinion testimony about the reasons for the restatement, to exclude Mr. Brice under 403.

THE COURT: I'm not going to do that. I don't know. The problem I have is when a trial commences, and I've said certain things to the jury about length of trial and how we're progressing, and then there was -- I called it a bit of a shuffle, that the deck was being reshuffled -- and I don't like decks to be reshuffled, though -- listen, circumstances change, so maybe you do reshuffle. But I think it was a trial decision at the time because of the exigent circumstances that existed, and I'm not going to -- I'm not going to foreclose them from that, but thank you anyway for pointing that out.

MR. HEBERLIG: Yes, Your Honor.

THE COURT: Now, Mr. Lincenberg. Oh, not Mr. Lincenberg.

MR. LANDMAN: Good afternoon, Your Honor.

THE COURT: You're not Mr. Lincenberg.

MR. LANDMAN: Michael Landman for defendant Chamberlain.

THE COURT: Okay. So here is what I was going to

do -- oh, then I'll get to that point. My clerk reminded me.

The motion to exclude evidence violating the confrontation clause, well, that's a serious problem and I won't know and the Government says we won't know until we see what the statements are.

I thought that it's a reasonable request of the Defense to require the Government to identify these statements. I don't know they have any objection to do so, do you?

MR. REEVES: I certainly have no objection to identifying the statements, the admissions by the defendants, before they're offered in evidence. I think I've offered to confer about a schedule --

THE COURT: What --

MR. REEVES: -- that would provide sufficient notice, and I really don't think we can square this issue up until we've had that dialogue.

MR. LANDMAN: Your Honor, our request in the motion was to provide the notice in advance of trial, and so any further conferring -- you know, we would like these statements and in our reply we modified that to next week -- by next week. Because as Your Honor knows, we have an enormous amount to do to prepare for trial.

And when we were here seven or eight months ago, we asked for a trial date in May, and part of the -- part of Your Honor's reason for making a more aggressive trial date is

that the ambush was out and the Government was not going to hide the ball and the Government was going to make early disclosures so that we knew what we were defending against.

This is just another example in a series of examples where the Government is not willing to show its evidence in advance.

THE COURT: We're not getting -- no, no. We're not getting into that; right? Everybody's getting along extremely well.

MR. LANDMAN: Well --

THE COURT: We don't need examples.

MR. LANDMAN: Okay. Well, this is --

THE COURT: It rises and falls on the strength of the showing that you needed.

By the way, yes, you do. I've agreed with you, you need it.

Okay. So it would be useful to give it to them -- when can you get them done?

MR. REEVES: I think -- I'm happy to provide an initial set of admissions at the end of -- how about a week from this Friday?

THE COURT: That sounds good.

MR. REEVES: And to begin the dialogue.

And I understand that -- you know, I strongly object to any description that the Government has not provided ample notice.

THE COURT: No, no. I'm not -- believe me --

MR. REEVES: I couldn't help myself. I'm sorry, Your Honor.

THE COURT: -- I'm actually not going there.

MR. REEVES: Okay. I'll listen to the Court.

THE COURT: I'm just too irritable. I'm going to yell at somebody.

MR. REEVES: We too are preparing a trial. It is complicated, and we want to --

THE COURT: But you have to do it anyway.

MR. REEVES: Yeah. I want to reserve --

THE COURT: It's a big thing. That is to say, a defendant's statement is usually of a heightened attention.

MR. REEVES: Agreed, Your Honor. I think this will fall into place with the specifics, and we're happy to begin the process a week from this Friday.

THE COURT: Great. Okay. That's called a good start.

MR. LANDMAN: Thank you, Your Honor.

THE COURT: Okay. Yes, sir.

MR. LANDMAN: If I could just briefly be heard on I believe it was Defendants' Joint Motion in Limine Number 6 regarding the account -- misuse of accounting principles.

THE COURT: Sure.

MR. LANDMAN: I understand Your Honor's ruling that the witness should -- witnesses should appropriately describe

accounting principles, and I understand that we'll obviously have the opportunity to cross-examine them to the extent they don't.

One aspect of that motion that I'd like to speak to is the Government's misuse of accounting terms in opening and closing statements. And some of the Government's response to the defendants' joint motion is that we use the terms that the witnesses use, and --

THE COURT: You're talking about their opening and you're also talking about their closing?

MR. LANDMAN: Correct.

THE COURT: I hope I'll be here for their closing. I guarantee you I'll be here for their opening. I go into a big song and dance about how openings are not evidence, that whatever the lawyers say is simply their expectation of what the evidence will show. There's no evidentiary value in it at all.

Let's not worry about that. I'm not going -- I'm not going to have a dress rehearsal of the opening.

MR. LANDMAN: No, I understand. And I'll leave it with just it's the defendants' position that this is a complicated accounting case and in the Government's attempts to simplify it for the jury, the defendants just request that they are precise with the terminology that they use.

THE COURT: Listen, let's say they're not. Let's -- I

mean, think about what you're saying. Let's say they're not.

MR. LANDMAN: It's --

THE COURT: If they're not, if they're not, your side will get up and show the jury why the imprecision is misleading and why the imprecision is unfair and why they're relying on the imposition to get a conviction in this case; whereas, if they were more precise, it wouldn't -- it wouldn't result in a conviction.

Think about that. That's what advocacy is. That's why lawyers are good. Not because they script the whole thing, but that they -- they look for examples, if there are examples, of, overbearing, unwarranted assertions.

MR. LANDMAN: Understood, Your Honor. Thank you.

THE COURT: Yeah, you can do it, I guarantee you. I see a lot of lawyers at that table who have specialized in doing that sort of thing. So I think that will -- that will happen.

Okay. I don't know that I've addressed Joel Scott and John Schultz. I said I was admitting that testimony. This is the Government's Motion in Limine Number 4.

MR. ABRAHAMSON: I think it's probably worth clarifying that, Your Honor, because --

THE COURT: Go ahead.

MR. ABRAHAMSON: -- the Joel Scott and John Schultz testimony are examples of post-acquisition events the

Government had proffered.

THE COURT: Yes.

MR. ABRAHAMSON: And so to the extent Your Honor's ruling is that the waterfront of events in those --

THE COURT: Okay. Run them by me, so then we'll talk about it.

MR. ABRAHAMSON: Sure.

THE COURT: Go ahead.

MR. ABRAHAMSON: Yeah. So Joel Scott are a set of disclosures made to HP's internal legal around May of 2012, and John Schultz is July 2012 episode where Dr. Lynch made certain statements directly to Mr. Schultz who was then the general counsel of Hewlett Packard.

Is there further question? I'm happy to keep going, but that's the basic summary.

THE COURT: Well, Mr. Weingarten, let me hear your position.

MR. WEINGARTEN: This is consequential evidence.

THE COURT: Yeah, go ahead.

MR. WEINGARTEN: Schultz was the general counsel of HP. From our perspective, it was an interview that was an ambush. He was trying to elicit evidence from Mike that was useful to his investigation. So at a minimum, if this evidence is admitted, at a minimum, I have to be able to cross-examine him effectively. I have to be able to impeach him.

THE COURT: Why wouldn't you be able to?

MR. WEINGARTEN: Because much of the raw material is post-acquisition. What I would use would be almost entirely post-acquisition.

And in addition, let's just say Mike Lynch testifies. Then, of course, he would be in a position to respond to the allegation that he mislead Schultz entirely based upon a long story of what happened post-acquisition.

THE COURT: So I think I better give more consideration to this. I may require an offer of proof --

MR. ABRAHAMSON: That's fine.

THE COURT: -- and do it outside the presence of the jury because it seems somewhat collateral. But I need to know exactly what he's going to say. Then I have to figure out to what extent does that open the door to Mr. Weingarten, who's standing next to the door with his foot wedged into the slightest opening in order to prevent it from being closed. So I have to think about that. He -- it's certainly fair that he gets -- that he can cross-examine these things. What he -- the scope of the cross-examination, though, is not unlimited.

MR. ABRAHAMSON: Your Honor, the Government is happy to prepare an offer of proof.

MR. WEINGARTEN: The Joel Scott thing is similarly situated. He was the general counsel for Autonomy in the United States. A couple of days after Mike Lynch was fired by

HP, he ran to Schultz and made statements. Obviously, I should be in a position to be able to cross-examine him about contemporaneous events all of which are post-ac.

MR. ABRAHAMSON: We have the same position, Your Honor.

THE COURT: Okay. Let's see it.

(Pause in proceedings.)

THE COURT: Where are we?

MR. SEILIE: Your Honor, I think the only remaining motion is Mr. Chamberlain's motion to exclude three specific categories of documents.

THE COURT: Right.

MR. SEILIE: And, you know, your Honor, the spirit of this motion is essentially what Your Honor has already addressed in connection with some of the post-acquisition evidence, which is these are documents that would implicate accounting decisions that the Government has not alleged are fraudulent and which aren't listed on the Bill of Particulars.

So to take one example, the credit hunt e-mails which are addressed in the motion. Now, these e-mails refer to something called a credit hunt, which is essentially where my client, Mr. Chamberlain, asked some of his colleagues to go over Autonomy's records in certain quarters and look for overlooked credits or overlooked revenue from previous quarters that they should use to offset costs and improve the books.

There's no allegation that any of these hunts resulted in a faulty accounting decision. There's no allegation that Mr. Chamberlain was attempting to encourage the manufacturing of any credits.

The only thing that included allowing the Government to introduce these e-mails would do is require us to put on in our defense case or during cross-examination evidence relating to these credits, which are unchallenged, which are not listed in the Bill of Particulars, that helps establish that there was nothing improper about them. And that kind of --

THE COURT: Doesn't it demonstrate Mr. Chamberlain's focus on finding additional revenue for Autonomy to report? Isn't that the purpose of it?

MR. SEILIE: But Mr. Chamberlain's focus on finding accurate revenue to report is irrelevant to the allegation of fraud, Your Honor. The fact that he's motivated to make the company look better is something that any employee of any company has.

And if that rationale is sufficient to allow the introduction of evidence relating to accounting decisions that have nothing to do with the Bill of Particulars, then there's no point to having a Bill of Particulars because then the Government could just bring in evidence of any accounting decision and say, "Look, Mr. Chamberlain wanted this number to look good." And then we would have to defend that number even

if it's not alleged to be fraudulent, even if there's no evidence that there was anything wrong with them.

THE COURT: Isn't that by way of defense to the evidence? You say, "Look, there's nothing improper about it."

MR. SEILIE: Well, what --

THE COURT: What you just said to me seems to be pretty good cross-examination. That doesn't mean it's irrelevant.

MR. SEILIE: Your Honor, if that's the case, then we would have to go -- for example, one of these e-mails is from April 29th, 2010. So that's in the process of preparing the books for the first quarter of 2010.

THE COURT: Okay.

MR. SEILIE: So if Your Honor allows the Government to bring in this evidence, then what we would have to do is introduce evidence of every single credit that's taken in Autonomy's books and show that there was nothing wrong with any of them.

THE COURT: Why?

MR. SEILIE: Because that's the only way to demonstrate the Government's implication that there is something wrong with going on these credit hunts, that there was -- that Mr. Chamberlain was implicitly encouraging them to do something wrong.

THE COURT: You can do it in one or two questions.

MR. SEILIE: I'm not sure how that -- I don't know that that's accurate, Your Honor.

THE COURT: When the trial goes on, I'll show you how to ask the questions. Okay.

MR. SEILIE: And, Your Honor, I think another good example is the three-options e-mail that also addressed in our motion.

Now, again, what this e-mail is in the context of the overall audit process, is it's a deliberative communication between Mr. Chamberlain and Mr. Hussain where, you know, Mr. Hussain set some targets, some financial targets, for the company. Nothing illegal about that. And Mr. Chamberlain is spelling out certain scenarios that would result in the meeting of those targets. None of these options were ultimately selected and none of them were ultimately used in the final accounting decision.

THE COURT: Why? The question isn't: Were they used?

The question is: Was he thinking about them and what did they mean?

What they meant was that he was looking for revenue recognition.

MR. SEILIE: Right. But, Your Honor, if any -- if the Court determines that any conversation about revenue recognition is relevant, then I'm not sure what the point of the Bill of Particulars was.

Now, we came in here and said Mr. Chamberlain has to make hundreds of accounting decisions every quarter, thousands throughout the period of time that the Government has claimed there was a conspiracy. We said we need to know exactly what accounting decisions the Government believes are fraudulent.

THE COURT: How do you respond to the Bill of Particulars?

MR. ABRAHAMSON: Your Honor, the Government also has an obligation to prove an underlying conspiracy and a scheme to defraud, and e-mails like the three-options e-mail show one of defendants in his own words engaging with a co-conspirator who's been convicted around questions of revenue recognition in light of questions about Autonomy's financial performance.

THE COURT: All right. I'm going to permit those categories in evidence.

MR. ABRAHAMSON: Thank you, Your Honor.

THE COURT: Let me talk about housekeeping.

So let's talk about jury selection. The jury selection is -- I previously indicated it was the 13th?

MR. REEVES: Thursday.

THE COURT: The 13th first. Now it's the 14th. Does everybody know it's the 14th? It's a Thursday.

MR. REEVES: Thursday the 14th.

THE COURT: Okay. I have excused, I don't know what the number is, individuals who have responded that they have a

hardship or that otherwise they would be excludable or would be considered to be excused.

Let me tell you how I drew the line. I did not draw the line on any for-cause challenge. That is -- by the way, I'm not even sure I saw any, but they weren't forwarded to me. What was forwarded to me was if a juror said, "I have a prepaid vacation," "I am the sole support of my sole proprietorship," "I take care of my relative," "I am a full-time student," those type of recognized hardships are excused.

If you need further details, I can give them to you. I just don't have them in front of me, but I'm certainly aware of a recent case, *U.S. vs. Ehmer*, that came out of the Ninth Circuit about two months ago, in which they explained in great detail how the jury selection process worked, and essentially it was: For hardship, a judge, *sua sponte*, can exclude the person for cause. A judge cannot do it without consultation with counsel.

So I haven't done any.

I'm hopeful that I will get a sufficient number of -- I don't know if it's called venire men -- the venire, whatever it is, the panel --

MR. REEVES: The panel.

THE COURT: -- that we will have 6 alternates, 12 jurors. That's because I don't want to try it again. I don't think anybody wants to try it again.

So that's what I'm going to do on the 14th. Before that date, you will get a copy of the questionnaire. I made some adjustments to the questionnaire, but I think I basically kept it intact because the parties agreed to it, and hopefully it will enlighten and expedite your decisions as to who you want on it.

Do you know the manner in which I pick a jury? You do, Mr. Lincenberg.

MR. LINCENBERG: I do, but go ahead.

THE COURT: Okay. And they do.

All right. So in the Jury Commissioner's Office, they have a -- they out of a random wheel will select the order in which jurors appear, and that will be the order that dictates the order in which they are called upon to serve or at least called upon to be questioned.

And they'll come into the courtroom and they'll fill -- I don't want to use the ceremonial courtroom, so what I'm going to encourage the parties is to try to limit the attorney participation so I can fill up the pews with the -- with the -- you know, the group.

I think I probably -- I think we'll probably end up somewhere in the neighborhood of between 80 and 100. That's my hope. I need 43, by the way, according to my calculations, which changes every time.

MR. LINCENBERG: How many do you have now that

survived the hardship?

THE COURT: I think we have somewhere in the neighborhood of 80, and hopefully we'll have a few more.

So you will have -- I think we can do a couple of things. One is, if the parties agree after you look at the -- after you look at it and you agree that so and so should be excused, I'll consider it. I won't necessarily agree, but I certainly will take it into consideration.

My concern is having to do this twice, so -- and also excusing people who otherwise shouldn't be excused.

I mean, there was some lawyer who said, because he indicated what his occupation was, he said, "Well, my practice is too busy. I can't sit on a jury." He's got a really busy practice. Well, that's enviable, but I'm not going to excuse him. You know, I just don't excuse people like that.

I had a mediator. Once a mediator said, "Well," she said, "I can't serve on this jury."

"Why?"

She said, "Well, I can't be fair," which struck me as an interesting comment from a mediator.

(Laughter.)

THE COURT: You know, so I get these situations and then somebody says, "Well, in six months, I've got to go to Sri Lanka or somewhere." So I don't necessarily -- I am generous in my excusing people; however, you know, there's no

need to bring in people if you both think that they're not favorable; but the idea is not to winnow it down, the idea is to beef it up.

People change. Suddenly they'll be sitting there and they'll say, "Gee, this is interesting." I don't know that's going to happen in this case but, you know, somehow they're intrigued.

I mean, I give all of these, you know, Fourth of July speeches about what a great privilege it is to serve on the jury, you know, what the presumption of innocence means, what the burden of proof means. I do all that.

And I especially do the fact that a defendant need not prove anything. Doesn't have to testify. Doesn't have to put on any evidence and those facts cannot be used against him; and even though you may want to hear his story, he's not under any obligation to tell you a story at all. I don't know to what extent that will be useful in this case, but I'll treat this case like any other case.

So they're sort of indoctrinated. They're indoctrinated from the point of view that jury service is not only an obligation but a rare opportunity to participate in the civics of our country.

So I generally get a pretty good "Let's do it." Not always. Not always. Especially with the length of this and the subject matter of this case, you're not terribly attractive

to jurors.

So we will pick the jury that day and then start the trial on the following Monday.

MR. LINCENBERG: A couple of questions about what the Court has reviewed.

First with regard to the questionnaires, it sounds like the Court is going to send out more questionnaires if you're at about 80 and you're not sure if there will be how many people coming in. Is that the Court's thought?

THE COURT: I don't know what's happening.

THE LAW CLERK: They sent followup, like second notices to people who hadn't responded. So some of them got it the first time, but maybe they didn't fill it out on paper.

MR. LINCENBERG: Okay.

THE LAW CLERK: So we're waiting on that.

THE COURT: A lot of people don't respond the first time, and so you have to send out a reminder.

MR. LINCENBERG: So in that regard, as I understand it, the Court sent out a questionnaire discussing a certain time frame based upon what the Court had heard, that the Government's trial estimate -- I can't recall if at that point it was four weeks or five weeks.

So the Court's aware, the Government has had different estimates as they've evaluated their case. It's gone up from four to five, to what we understand now is six-plus weeks of

the Government's case.

And as we look at the calendar and we check the Court's calendar, there's also some weeks when the Court anticipates being dark parts of some weeks. So, for example, the week of April 22nd, what we saw was that the Court was anticipating being dark on Wednesday and Thursday of that week.

So let's just say the Government is six-plus of court days, maybe we're not talking seven weeks. Who knows if there's a COVID outbreak or whatever happens that there may even be delays. The Defense has the same estimate for the Defense case of four weeks.

We also -- if you figure maybe two weeks of jury deliberations, we have some concern -- you know, the questionnaire went out, I think, talking about 10 weeks or so, and maybe it would be worthwhile to let the jurors know it really could be 13 weeks.

Again, the Defense estimate is no different, but the Government's estimate has increased. And also looking at the Court's calendar, depending or how far we go, there's a couple of weeks --

THE COURT: Don't worry about the Court's calendar. I'll adjust. This case is a priority on the Court's calendar. So, you know, if I have to not go to the Ninth Circuit, I don't go to the Ninth Circuit. If I can't go here, I can't go there, that's okay.

However, you raise an issue as to the Government's increase in their -- in their estimation, which I find remarkable since the only thing that happened that I saw was severing a count. And I think the comment was made, "Well, then our case will be shorter." And then come up here and they tell me it's going to be longer. Maybe I ought to put the count back in if it will get a shorter trial.

But I don't know what's going on; that is to say, I have no idea what stipulations have been entered into. I would find it remarkable if there's an argument about authenticity of documents. Just -- you know, maybe there is.

MR. LINCENBERG: I don't think that's an issue, Your Honor.

THE COURT: No, I wouldn't think so. I don't think we need any custodians. I think -- I think that it really is the responsibility of the Government to cut way back on their presentation, and then it depends on the cross. If the cross is such where you bring into doubt or you create a doubt or you raise an issue that can be satisfied or addressed by the Government in further questioning or a second witness or a third witness, sure. But I've found that that's not necessarily the case. That may be one approach you want to take, but I'd be surprised if it is in this case.

This is, in large part, an accounting case. In large part, not completely, but in large part facts may be different

interpretations, but the facts are the facts. What happened happened. And I'd be surprised if -- you know, I don't know. I don't know what factual disputes will be there; and obviously if there's a factual dispute, you're entitled to explore that.

But I doubt if you're going to explore factual disputes that aren't really factual disputes because you lose a jury when you do that.

And I think that I'm going to run a fairly tight ship on the Government's evidence. That is, I'm not going to allow them to, you know, just constantly beat the dead horse. If they have 10 exhibits that show the same thing, they ask one question: The Exhibits 2, 3, 4, 5, and 6, are they part of this transaction?

Yes.

Admitted.

Yes.

Or do they show anything different?

No.

You don't have to go through: Now we look at Exhibit 2. Now we look at Exhibit 3. Now we look at Exhibit 4.

I don't want any of that.

MR. LINCENBERG: Your Honor, I'll leave it to Mr. Reeves to, you know, discuss his case and their feeling of the need for whatever length he wants. I think it's important in terms of even juror qualification.

And also we asked the Court, you know, from the Defense perspective, and we don't get to control what obviously the Government puts in, but one thing we tried to do, you know, early on I came in two years ago asking for a Bill of Particulars. Throughout the time, you know, the Court has indicated we're going to try to have notice and tighten it. That Bill of Particulars has monumentally expanded.

And with regard to some of the motions in limine, for example, where we were trying to keep out things that are accounting decisions that aren't really part of what's charged there, the Court denied our motions in limine.

I can give, you know, just a small example of what I think is going to contribute to a longer trial, and maybe necessary, on this little credit hunt issue, which respectfully from the Defense side was sort of a no-brainer. They've got so much evidence, so many transactions they're putting in. Do we really need to get into transactions that are by all accounts perfectly legal?

And we just did Rule 15 depositions, and two of the witnesses, I don't know, I probably had to spend 30 or 40 minutes covering credit hunts or whatever just because it may be coming in. We weren't sure how the Court's going to rule. Now we have that testimony that will be played.

And there's a lot of things out there like this that are, you know -- so, you know, I just ask -- I ask the Court to bear

that in mind. The Court is calling balls and strikes as best as the Court can, but there is a consumption of time element that relates to that.

MR. REEVES: Can I please respond?

I think the schedule is important and I appreciate this dialogue, and I think it's important for the Court and the parties to be realistic about this. I think that has broadly been accomplished by the jury questionnaire, which was screening the jurors for 10 weeks of service, approximately mid-March through the end of May. And currently the Government is estimating that this trial will conclude by the end of May. Approximately.

What changed? Counsel asked the question what changed in the Government's case. What changed was the experience around the Rule 15 depositions, which, I want to compliment counsel, I thought went forward with a high degree of cooperativeness but also revealed one key thing. The cross-examinations were exceptionally long.

That is a function, as I acknowledged to counsel, about the uncertainty about what the trial record would be, but it's also reflective of the absence of Court in policing repetitive, I would argue, objectionable testimony.

As a result of that, I don't know exactly -- I remember the *Hussain* case well, and we've spent a great deal of time thinking about our schedule and tightening our case; but when

we realistically factor in cross-examinations by not one but two defendants, good counsel asking, I hope, good questions, I expect good questions, all of our estimates of our witnesses have a factor of one and a half to two times for the cross-examinations.

We have a 22-hour trial week, 5.5 hours per day. We added in the Court's dark days and sort of really tacked out what the schedule would be. We see us rounding out sometime in early May. That should allow for a Defense case in mid-May.

Every case I've ever done I've heard that the Defense case is going to be enormous. That was exactly what John Keker said about the *Hussain* case. Okay. We'll plan several weeks, a couple -- two to three weeks for a Defense case. I think that roughly gets us to end of May.

I would not mind in screening with the jurors that they be reminded of service through Memorial Day, through approximately June 1, possible leaving it a little loose. I just think the key thing for all parties, and I think I'm speaking for the Court as well, is to not undersell the duration of the jury service so that we come in under that.

But the Government has worked incredibly hard to really estimate its trial coming back from London and the Rule 15s. We increased the estimated duration of the cross-examinations. That's what resulted in the extension of time estimate to the parties, but I still think we're broadly on track, and at this

point we're playing on a case-in-chief that we expect to wrap up in early May.

MR. LINCENBERG: Let me comment on that, if I may.

First, early May confirms what I'm suggesting. I guess that's seven weeks or so. It's fairly lengthy.

Second, just to the small points of the Rule 15 depositions, first of all, there were three depositions. Two of them the Government had cross-examinations. I thought they were actually pretty efficient. I have no dispute. Apparently counsel's objecting to the one of their witnesses for whom there was a thorough cross-examination. It was not overly lengthy, but the cross-examination has to be thorough. So I don't think that that should be contributing to any change in the estimate, but it is what it is.

The Government's estimating early May. Right now I'm not quibbling. I'm not saying that we can control what they do, but I'm raising with the Court --

THE COURT: I can.

MR. LINCENBERG: -- if they're early May, it's six, seven weeks.

THE COURT: I can control it. I can control it. If I hear repetitive questions, if I hear questions on issues that aren't in dispute, I cut you off. I don't care where you are.

MR. REEVES: We would welcome that.

THE COURT: Not at the time, but that's what I do. I

run the railroad.

MR. LINCENBERG: I get it, but it tends to redound to the deficit -- to the detriment of the Defense because the Defense --

THE COURT: You see, you say that. I don't -- I don't know that that's the case. I'm trying to figure out why.

MR. LINCENBERG: Because we go second; and all of a sudden, we're pushing up against some dates. And, you know, Mr. Reeves says, "You know, I hear a lot of times the Defense is going to put on a big case and they don't."

He's right, a lot of times they don't. And they may prepare to do so.

I would expect that in this case, I would expect Dr. Lynch is going to testify. I would expect that Mr. Chamberlain is going to testify. It sounds like there's going to be some experts. We have some Rule 15. There may be a few other witnesses.

The examinations of defendants tend to be a certain length of time so we're estimating four weeks. Maybe it will be less, but that brings us into June, and that's a -- that's pretty lengthy. And it's certainly longer than what the Court has been time-testing, you know, with hardship in the questionnaire thus far.

THE COURT: Okay. Thank you.

MR. LINCENBERG: So really where it just leaves us, at

least at this point, is I think in terms of talking to the jurors, they should anticipate --

THE COURT: But the problem is you start talking about June, you know, "Well, I have my kids out of school," "I have my June vacation," "I have my this," "I have my that."

You know, I mean, if you get a commitment from people upfront that, in a sense, they'll go as long as it takes, even if it takes the summer, you're not going to get a jury.

I mean, if you're going to get a jury, how many postal workers do you want on your jury?

MR. LINCENBERG: But -- we get it. We're not looking for a trial to go till late June.

THE COURT: Well, then I think that --

MR. LINCENBERG: We just don't want it to cut into us.

THE COURT: Well, I think that -- I think you make a decision when you hear cross -- when you hear the examination, you make a decision whether or not you want to cross and to what extent you're going to prove something. You do that all the time. I've seen you do that all the time. Sometimes no questions.

MR. LINCENBERG: I get it, but we have over 40 Government witnesses and --

THE COURT: I don't know that we're going to have over 40 Government witnesses. You've got to -- you've got to look at this. I was dumbfounded when I saw that exhibit list.

I mean, I guess it's because we don't want to listen to the Defense say mid-trial "Where is Document Number 18,436, subpart A?" And they don't want -- you don't want to say "We never gave it to you," even though it's Document Number 18,462, part A.

Anyway, fine. Everybody's been inclusive, but those aren't trial decisions. Those are discovery steps. And trial decisions are: Where are the 20 documents or 30 documents, the 50 documents that are going to make a difference in this case? That's the trial decision.

Where is the bit of testimony that's going to make a difference in this case?

And I think everybody knows what the case is. Well, I say "everybody" -- I'm not sure I do -- but I have to believe that the parties know this case so much better than the Court and -- and what they intend to do. They've spent countless hours going through the *Hussain* case and the United Kingdom case.

So, you know, it's not like, "Gee, we have no idea what the Government is going to do in this case." I think you've got a very good idea what the Government is going to do in this case. Now, they may not do it but you certainly have a good idea, and then you plan your defense around that case, unless you have something else to say about it. Maybe you do. Maybe you do.

But it's a case that -- essentially, I'm going to say

without surprises, but there's never a case without surprises, but it's a case of limited surprises and limited unknowns. I doubt if you saw somebody on that witness list you had no idea what they were going to testify about.

MR. LINCENBERG: That's not the point obviously, but when we get doubling and tripling of Bill of Particulars and we hear counsel say, "Your Honor, anything that deals with revenue recognition has to do with this case," and I think, you know, my concern is that we're going to be rolling through the weeks and all of a sudden, you know, people are going to be blaming the Defense because we're doing our cross-examination of the witnesses.

THE COURT: They're not going to blame you. They're not going to blame you unless it's your fault.

MR. LINCENBERG: A couple of other small points relating to what the Court covered. With regard to the number of strikes, we would ask instead of 10 and 6, that the Court make it 12 and 7. We have two different defendants. We have some slight different things that we're looking at for our clients. It's a lengthy --

THE COURT: I'm doing 12 and 6.

MR. LINCENBERG: What?

THE COURT: I'm doing 12 and 6.

MR. LINCENBERG: 12 and 6, okay.

And with regard to the weeks, I just note for the Court

that the abbreviated week that the Court has of April 22 through 25, where right now the Court's schedule is to not be here on that Wednesday and Thursday, I note that --

THE COURT: I will be here Wednesday.

MR. LINCENBERG: You will be?

THE COURT: I will be here Wednesday. I won't be here Thursday. I will be here Wednesday.

MR. REEVES: So that's yes to April 24th, Wednesday?

THE COURT: Yes, to April 24th.

MR. REEVES: And no to Thursday, April 25th?

THE COURT: Yeah.

MR. REEVES: Okay.

MR. LINCENBERG: I would --

THE COURT: And it's no to April 25th unless I see some disaster. It's not a secret. It's the Northern District meets and goes through various issues that the judges have. And I've always gone because I've always found it to be useful, but it's not like it's written in stone. If I can't go and it's more important that I devote that as a trial day, I'll let you know, but that's April. And I'll let you know. I'll try to let you know fairly early on.

MR. LINCENBERG: Okay. And I would also --

THE COURT: Also the other thing I just wanted to make clear, if it's not clear already, there's no problem in rearranging order of witnesses. In other words, if somebody

comes and they need to testify because they're going home or something, then I interrupt a witness's testimony, put it on. There's no problem at all. That is just a matter of courtesy. Just let the other side know that that's really what you want to do.

MR. LINCENBERG: We understand that, Your Honor.

MR. REEVES: Thank you, Your Honor. That was important in the *Hussain* case, and I anticipate it will be important in this trial.

THE COURT: Yeah, especially if you have witnesses coming from the United Kingdom.

MR. LINCENBERG: I would note that that week of April 22nd, and I'm not asking the Court to do anything about it, Monday night is the first night of Passover. There's a number of attorneys on both sides of the table who it impacts, and we're all out of town. I'm not asking the Court to change the schedule, but just to keep it in mind if there's some shakeup.

THE COURT: I'll keep it in mind.

MR. LINCENBERG: Okay. One other thing I wanted to mention for the record, so to speak. I mentioned at our last hearing that with regard to the Deloitte witnesses, that we did not yet have an on-call agreement signed.

THE COURT: Right.

MR. LINCENBERG: And the Court made some helpful comments, which I also passed on to their counsel. And we're

trying to work out -- it looks like we may have -- get to the point where we have an on-call agreement. I've made some accommodations as have counsel for those witnesses, but we don't yet have one. And I just note again for the record, unless we get one, we intend to have those witnesses here on March 18th.

THE COURT: Okay. Well, I'll order them.

MR. LINCENBERG: Yeah.

THE COURT: That's it.

MR. REEVES: Your Honor, could I be heard briefly on that?

THE COURT: Yeah, sure.

MR. REEVES: I think the simpler remedy with regard to the Government-issued Rule 17 subpoenas to Nigel Mercer and Richard Knight is to adjourn the return date for those subpoenas to a realistic date so that retired individuals living in foreign countries --

THE COURT: I think that's a function of sitting down and working it out.

MR. REEVES: I'm happy to do that.

THE COURT: You have to work it out with counsel in England and --

MR. LINCENBERG: And I believe we'll get it worked out. I just --

THE COURT: I'm sure it is.

MR. LINCENBERG: It's important to me so I want to have it on the record.

THE COURT: No one wants to say, "Well, I'm the judge so you're here."

MR. REEVES: Yeah. Your Honor, I know there's been a lot of work on this, but I'm informed by the counsel for Deloitte that has represented to the United States that his clients plan to appear and testify with or without the requested on-call agreement. They will be here.

At the request of counsel, the Defense counsel, we issued these subpoenas pursuant to the cooperation agreement. I believe they are, in that technical sense, witnesses of the United States, and I take it quite seriously that they will appear when we ask them to be here and I expect them to be here. And we can set that date reasonably and we're happy to do that.

MR. LINCENBERG: And we -- again, we've been very grateful to Mr. Reeves for his assistance with that and we continue to be, and I believe we'll get it worked out. I just, you know, don't want to be caught with my pants down on this.

MR. REEVES: Let that be our hardest problem.

THE COURT: Okay. Anything else from anybody? Mr. Leach.

MR. LEACH: Yes, Your Honor. Briefly on the mechanics around exhibits. What is the Court's preference in terms of

witness binders and physical copies? I think --

THE COURT: Well, I think it would be useful -- I'll be guided also by the Defense in this regard. What I have found useful is witness binders and you get a witness binder for each witness -- I mean, for each juror and you put them all in.

And, you know, I guess if there's an argument about should Number 6 come in, we can have that discussion at the end of the day or before it's presented, or something of that nature, but usually we don't have those arguments.

MR. LEACH: Your Honor, I think what we were contemplating was, you know, to provide the documents electronically to the Court and to display them to the jurors rather than physical copies.

THE COURT: Right. Oh, you're not going to give them a book?

MR. LEACH: I think given the number of exhibits and the number of jurors and alternates and considerations of the U.S. Attorney's Office, it's just impractical.

THE COURT: Well, they all have computers -- I mean, they all have screens. Just show them on the screen.

And what I don't want do, the couple things I don't do, one is unless -- unless there's an objection to a particular exhibit, I admit it.

You don't have to show it. You don't have to lay a

foundation: Is this a true and accurate representation of da-da-da? You don't have to do any of that. You don't have to say "Can I approach the witness?"

It's just like, you know, let's forget about the courtroom and do it like you would have a conversation with somebody. You know, will you look at Tab 6? Tab 6 goes up. Done, you know. And if -- and what I might do if Tab 6 isn't in evidence, I might say "Without objection, admitted." So you don't -- we just cut down on the time -- that time.

MR. LEACH: Understood. And I think all parties are working towards that, Your Honor. I just -- I don't want to have to make unnecessary copies if we don't have to; and if the Court is willing to take an electronic set, if we --

THE COURT: I'm willing to take an electronic set.

MR. LEACH: Okay. Thank you.

THE COURT: Mr. Morvillo.

MR. MORVILLO: One small issue.

Dr. Lynch's bail currently allows him to be away from his house between 9:00 a.m. and 9:00 p.m.

THE COURT: Right.

MR. MORVILLO: We would like for the purposes starting this week to extend that period so that he can work with counsel while we're here --

THE COURT: Granted.

MR. MORVILLO: -- starting from 7:00 a.m. to midnight,

Your Honor.

THE COURT: Granted.

MR. MORVILLO: Thank you.

THE COURT: Mr. Weingarten.

MR. WEINGARTEN: Thank you, Your Honor.

And I'm not beating a dead horse and I'm not obsessed with post-ac, I just have a procedural question.

THE COURT: Yes.

MR. WEINGARTEN: So I understood the Court's rule to be if we're contemplating using or making reference to anything post-acquisition, cross-examining a government witness, introducing evidence, even making argument and jury presentations, we present it to you first.

THE COURT: Yes.

MR. WEINGARTEN: Okay. Now, would it be helpful if we presented it to you somewhat in advance? In other words, something like a trial memo or a trial brief or --

THE COURT: Sure.

MR. WEINGARTEN: Okay. You would welcome that.

THE COURT: Sure.

MR. WEINGARTEN: Okay. Thank you.

MR. LEACH: Nothing further, Your Honor.

THE COURT: Okay. Good night.

MR. LINCENBERG: Thank you, Your Honor.

MR. MORVILLO: Thank you.

THE CLERK: Court is in recess.

(Proceedings adjourned at 4:19 p.m.)

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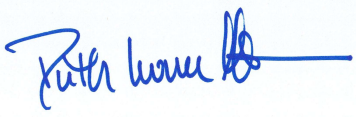
CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

DATE: Friday, February 23, 2024



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